

1 BEFORE THE
2 NATIONAL LABOR RELATIONS BOARD
3

4 In the Matter of

Case No. 21-CB-112391

5 UNITED FOOD AND COMMERCIAL
6 WORKERS UNION, LOCAL 135, UNITED
7 FOOD AND COMMERCIAL WORKERS
8 INTERNATIONAL UNION, AFL-CIO,
9 CLC (Ralphs Grocery Company)

Respondent,

and

10 BRANDON DION,

11 Charging Party.
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15 **EXCEPTIONS OF UNITED FOOD AND COMMERCIAL WORKERS UNION**
16 **LOCAL 135, UNITED FOOD AND COMMERCIAL WORKERS**
17 **INTERNATIONAL UNION, AFL-CIO, CLC FROM DECISION OF**
18 **ADMINISTRATIVE LAW JUDGE**
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Respondent United Food and Commercial Workers Union Local 135, United Food and Commercial Workers International Union, AFL-CIO, CLC hereby submits the following exceptions from the decision of the Administrative Law Judge in this matter.

1. **Exception No. 1.** The Administrative Law Judge erroneously found that the Union had required Charging Party Brandon Dion to come to the Union's office to affiliate and threatened him with discharge pursuant to the union security clause of its collective bargaining agreement with Ralphs Grocery Company if he did not do so. (ALJ Decision at 10:31-35; 11:36-12:4; 12:11-16; 13:9-12; 13:17-20; 14:6-15; 14:27-35; 14:47-15:5)

In making this finding the Administrative Law Judge discounted the uncontradicted evidence that the Union not only (1) has never sought or threatened to obtain the discharge of any employee for failure to come to the Union's office to affiliate (Tr. 62), but (2) advises new employees in its initial "welcome packet" to notify it in writing, rather than in-person, if they wish to pay less than full dues (JX 1, Exh. 2, at 4), (3) has reduced the Charging Party's dues, even though he never came into its office to affiliate, and (4) has not sought to have him fired or taken any other action against him for failure to come to the Union office or any other ground. (Tr. 75-76, 97)

2. **Exception No. 2.** The Administrative Law Judge erroneously held that the Union had breached its duty of fair representation by requiring new employees to come to the Union's office to affiliate. (ALJ Decision at 10:31-35; 11:36-12:4; 12:11-16; 13:9-12; 13:17-20; 14:6-15; 14:27-35; 14:47-15:5)

The Administrative Law Judge applied the wrong legal standard by applying a balancing test, rather than the tripartite standard applicable to duty of fair representation claims.

3. **Exception No. 3.** The Administrative Law Judge erroneously held that the Union had breached its duty of fair representation by requiring new employees to come to the Union's office to affiliate. (ALJ Decision at 10:31-35; 11:36-12:4; 12:11-16; 13:9-12; 13:17-20; 14:6-15; 14:27-35; 14:47-15:5)

1 The Administrative Law Judge misapplied the law by finding that asking new
2 employees to come to the Union office imposed a significant burden on those
3 employees and that this burden outweighed the Union's legitimate interest in avoiding
4 fraud or forgery, educating new employees about their rights, updating or correcting
5 their contact information, and other benefits from bringing new employees to the
6 Union's office.

7 **4. Exception No. 4.** The Administrative Law Judge erroneously held that the
8 Union had breached its duty of fair representation by requiring new employees to come
9 to the Union's office to affiliate. (ALJ Decision at 10:31-35; 11:36-12:4; 12:11-16; 13:9-12;
10 13:17-20; 14:6-15; 14:27-35; 14:47-15:5)

11 This per se prohibition on requiring new employees to come to the Union's office
12 to affiliate conflicts with Board law in this area and would harm the interests of both
13 employees and unions.

14 **5. Exception No. 5.** The Administrative Law Judge erroneously held that the
15 Union had breached its duty of fair representation by failing to provide Dion with a
16 detailed apportionment of its and its affiliates' expenditures for representational and
17 nonrepresentational activities. (ALJ Decision at 9:3-10; 9:14-10:6; 10:19-23)

18 The Administrative Law Judge misapplied the law by holding that this
19 obligation attached in the absence of any objection by the Charging Party to the Union's
20 use of his dues to fund the Union's nonrepresentational activities on political or
21 ideological grounds.

22 **6. Exception No. 6.** The Administrative Law Judge erroneously ordered that
23 the Union cease and desist from certain specified actions and take other specified
24 actions. (ALJ Decision at 15:30-16:30)


25 No remedy of any sort is appropriate in this matter in that the Union has not
26 violated the Act in any of the ways alleged by the General Counsel and found by the
27 Administrative Law Judge.

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1 The arguments and authorities offered by the Union in support of these
2 exceptions are set out, along with a Statement of the Case and a Statement of Questions
3 Presented, in the Brief in Support of Exceptions filed and served herewith.
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5 DATED: March 18, 2015

SCHWARTZ, STEINSAPIR, DOHRMANN
& SOMMERS LLP
TAMRA M. SMITH

7
8 By 

TAMRA M. SMITH
Attorneys for Respondent United Food and
Commercial Workers Union, Local 135, United
Food and Commercial Workers International
Union, AFL-CIO, CLC

1 PROOF OF SERVICE BY MAIL AND E-MAIL

2 *UFCW Local 135 (Ralphs Grocery Company)*
3 *NLRB Case No. 21-CB-112391*

4 HENRY M. WILLIS certifies as follows:

5 I am employed in the County of Los Angeles, State of California; I am over the
6 age of eighteen years and am not a party to this action; my business address is 6300
7 Wilshire Boulevard, Suite 2000, Los Angeles, California 90048-5268, Facsimile No.:
(323) 655-4488, e-mail: hmw@ssdslaw.com.

8 On February 19, 2015, I caused the foregoing document(s) described as

9 **EXCEPTIONS OF UNITED FOOD AND COMMERCIAL WORKERS UNION
LOCAL 135, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC FROM DECISION OF ADMINISTRATIVE LAW JUDGE**

10 X **BY PLACING FOR COLLECTION AND MAILING:** By placing a true and correct
11 copy (copies) thereof in an envelope (envelopes) addressed as follows:

12 Glenn Taubman, Attorney at Law
13 National Right to Work
Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
14 Springfield, Virginia 22160

Robert MacKay, Attorney at Law
National Labor Relations Board
Region 21
555 W. Beech St., Ste. 418
San Diego, CA 92101-2940

15 and by then sealing said envelope(s) and placing it (them) for collection and mailing on that
16 same date following the ordinary business practices of Schwartz, Steinsapir, Dohrmann &
Sommers LLP, at its place of business, located at 6300 Wilshire Boulevard, Suite 2000, Los
17 Angeles, California 90048-5202. I am readily familiar with the business practices of Schwartz,
Steinsapir, Dohrmann & Sommers LLP for collection and processing of correspondence for
18 mailing with the United States Postal Service. Pursuant to said practices the envelope(s) would
be deposited with the United States Postal Service that same day, with postage thereon fully
19 prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if the postal cancellation date or postage
20 meter date on the envelope is more than one day after the date of deposit for mailing in the
affidavit. (C.C.P. §1013a(3))

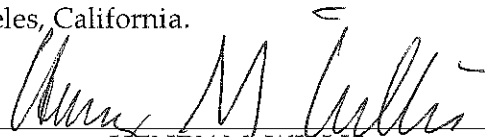
21 X **BY E-MAIL:** By transmitting a copy of the above-described document(s) via e-
22 mail to the individual(s) set forth above at the e-mail addressed indicated.

23 Glenn Taubman, Esq.
e-mail: gmt@nrtw.org

Robert MacKay
e-mail: Robert.MacKay@nlrb.gov

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on February 19, 2015, at Los Angeles, California.

27 
28 HENRY M. WILLIS